

STATE OF NORTH DAKOTA
NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND
REHABILITATION

In the Matter of the Rolette County Law Enforcement Center,
Rolla, North Dakota

ORDER OF NON-COMPLIANCE AND RECLASSIFICATION

This order is issued in accordance with N.D.C.C. § 12-44.1-25.

The North Dakota Department of Corrections and Rehabilitation ("DOCR") makes the
following:

Findings of Fact

I.

The Rolette County Law Enforcement Center (RCLEC) is a grade one correctional facility in Rolla, Rolette County, North Dakota. RCLEC is operated under the authority of the Rolette County Sheriff Nathan A. Gustafson and Administrator Titus Whitebody. Sheriff Nathan A. Gustafson and the Rolette County Law Enforcement Center are under the governing authority of the Rolette County Commissioners.

II.

On June 4, 2020 at approximately 12:45 a.m., Lacey Higdem died while in custody at RCLEC.

III.

RCLEC staff did not complete a medical screening of Lacey Higdem.

IV.

Surveillance camera video shows Lacey Higdem exhibiting signs of intoxication, including hallucinations during the booking process and throughout her time in custody, and difficulty with balance during an interaction with RCLEC staff.

V.

Surveillance camera video shows RCLEC staff did not place Lacey Higdem on observation and did not complete observations of Lacey Higdem's wellbeing every fifteen minutes or every hour.

VI.

On June 3 and 4, 2020, RCLEC daily written logs do not correlate with actual activity times for some activities, not all appropriate shift activities were logged, and some logged events were not actually completed.

VI.

RCLEC staff received healthcare training, but RCLEC staff were not able to identify Lacey was having a medical emergency or respond with an AED, Narcan, or immediate CPR.

VII.

The DOCR correctional facility inspectors conducted the most recent annual facility inspection of RCLEC on October 24, 2019. The DOCR correctional facility inspectors' report includes five (5) areas of noncompliance with the North Dakota Correctional Facility Standards, including non-compliance with Standard 32, which relates to inmate observation, and Standard 59, which relates to intoxication management.

VIII.

RCLEC did not implement corrective actions to address areas of noncompliance from the DOCR inspection report from the inspection on October 24, 2019.

IX.

DOCR correctional facility inspectors conducted an initial review of the in-custody death of Lacey Higdem in accordance with N.D.C.C. §§ 12-44.1-24 and 12-44.1-25 and current North Dakota Correctional Facility Standards on June 9, 2020. On June 19, 2020 the DOCR issued RCLEC an Order of Temporary Closure, pending a full investigation of the incident. The Order included an outline of RCLEC's non-compliance with standards, which the DOCR Director found posed an immediate life safety concern. On July 10, 2020 RCLEC was provided a corrective action plan from the DOCR. On July 20, 2020 the DOCR provided a process for such corrective action. On July 22, 2020 DOCR provided an onsite overview of the DOCR administrative investigation to RCLEC stakeholders. On August 10, 2020 DOCR facility inspectors visited RCLEC to review progress and visit with the recently hired RCLEC Administrator. On August 31, 2020 DOCR facility inspectors met with RCLEC administration and interviewed staff to test knowledge for appropriate management of the RCLEC.

X.

DOCR Facility Inspectors observed and reported positive changes in staffing. The RCLEC has hired a Facility Administrator and Correctional Supervisor, which adds two (2) additional levels of supervision over RCLEC staff, and each shift will also have an additional officer. The RCLEC contracted with trainers to provide training on emergency medical care, including recognition of the signs and symptoms of intoxication and withdrawal and how to respond to such medical emergencies. The Sheriff, Facility Administrator, and other staff traveled to Cass Co. and evaluated practices and procedures which may be incorporated at the RCLEC. The DOCR has completed an

assessment of RCLEC staff knowledge of revised facility policy and procedures and has determined RCLEC staff knowledge is adequate to operate a grade three facility. The DOCR has also assessed the ability for RCLEC to implement the changed policies and procedures and has determined, based on new staffing plans, training, and completion of the investigation, RCLEC staff is likely to implement the changes adequately.

Based on the above Findings of Fact, the DOCR makes the following:

Conclusions of Law

I.

RCLEC is a county correctional center subject to N.D.C.C. Chapter 12-44.1.

II.

N.D.C.C. § 12-44.1-24 requires the DOCR to prescribe rules establishing minimum standards for the construction, operation, and maintenance of county correctional facilities; prescribe rules for the care and treatment of inmates; cause the rules and regulations be made available to inmates; and appoint a correctional facility inspector qualified by special experience, education, or training to inspect correctional facilities. Inspection must include health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

III.

The DOCR has promulgated Correctional Facility Standards in accordance with N.D.C.C. § 12-44.1-24 and has appointed a correctional facility inspector in accordance with the requirements of N.D.C.C. § 12-44.1-24.

IV.

N.D.C.C. § 12.44.1-25 authorizes the Director of the DOCR to issue a report of non-compliance if a correctional facility is in violation of any required minimum standards, applicable state or federal law, or DOCR rules for correctional facilities.

V.

N.D.C.C. § 12.44.1-06 authorizes the DOCR to grade correctional facilities as grade one, grade two, grade three, or grade four correctional facilities following inspection.

VI.

When the DOCR determines that the nature and extent of deficiencies in a correctional facility subject to N.D.C.C. Chapter 12-44.1 are such that an immediate order of full, partial, or temporary closure is necessary to protect the health and safety of the inmates, correctional facility staff, law enforcement, visitors, or the public, N.D.C.C. § 12-44.1-25 authorizes the Director of the DOCR to issue an order of full, partial, or temporary closure.

VII.

Standard 21 of the North Dakota Correctional Facility Standards requires every facility have a written policy and procedure that includes, in relevant part, a written record of a medical screening of the following: illnesses; medication; use of alcohol and other drugs; mental health issues; history or thoughts of self-harm; observations of behavior, including state of consciousness, mental status, appearance, conduct, tremor and sweating; etc. Standard 4 provides, in relevant part, “[e]ach requirement for a policy or procedure in the North Dakota Correctional Facility Standards includes the requirement to demonstrate the facility’s compliance with its policy.” RCLEC’s Policy 2.01 meets the requirements of Standard 21 of the North Dakota Correctional Facility Standards. RCLEC did not follow its policy. The actions of RCLEC staff did not meet the minimum requirements of Standard 21 because RCLEC staff did not complete a medical screening of Lacey Higdem. RCLEC violated Standard 21 of the North Dakota Correctional Facility Standards.

VIII.

Standard 32 of the North Dakota Correctional Facility Standards requires correctional facilities have a written policy and procedure for inmate observation that requires trained staff to “personally observe each inmate during each hourly period on an irregular basis” and “personally observe inmates who exhibit suicidal tendencies, self-destructive behavior, emotional distress, or have specialized medical problems at more frequent intervals as the inmate’s condition requires.” Standard 32 of the North Dakota Correctional Facility Standards also requires “documentation of inmates in observation must include (a) [r]eason for placement; (b) [s]taff assigned to supervise; (c) [l]ocation, date, time, activities, and condition of inmate at each check; (d) [a]ctions by the agency to provide specialized outside services for an inmate; and (e) reason for removal from observation.” Standard 4 of the North Dakota Correctional Facility Standards provides, in relevant part, “[e]ach requirement for a policy or procedure in the North Dakota Correctional Facility Standards includes the requirement to demonstrate the facility’s compliance with its policy.” RCLEC’s Policy 2.01 and Policy 3.02 are compliant with Standard 32 of the North Dakota Correctional Facility Standards. RCLEC did not follow its policy because RCLEC did not complete hourly checks or fifteen (15) minute observations of Lacey Higdem. RCLEC violated Standard 32 of the North Dakota Correctional Facility Standards.

IX.

Standard 33 of the North Dakota Correctional Facility Standards requires every facility “maintain a daily written record, including the date and time and the name of staff that completed the record, including: (a) Personnel on duty; (b) Inmate population count, include inmates on temporary leave, which must be conducted at least three times in a 24-hour period; (c) Admissions and releases of inmates, including inmates transporting out of the facility along with reason of transport; (d) Shift activities; and (e) Entry and exit of physicians, attorneys, and other visitors. Standard 4 of the North Dakota Correctional Facility Standards provides, in relevant part, “[e]ach requirement for a policy or procedure in the North Dakota Correctional Facility Standards includes the requirement to

demonstrate the facility's compliance with its policy." RCLEC maintains daily written logs. The logs were inaccurate in several material aspects. The times on the logs do not correlate with actual activity times. In addition, not all appropriate shift activities are logged, and some logged events were not actually completed. RCLEC violated Standard 33 of the North Dakota Correctional Facility Standards.

X.

Standard 52 of the North Dakota Correctional Facility Standards requires every facility "have a training program approved by the health care administrator that includes: (a) Response to emergency health related situations; (b) Recognition of signs and symptoms and knowledge of action required in potential emergencies; (c) Administration of first aid and cardiopulmonary resuscitation; (d) Methods of obtaining assistance; (e) Recognition of signs and symptoms of mental illness, intellectual disability, emotional disturbance, and chemical dependency; (f) Procedures for patient transfers to appropriate medical facilities or health care providers; and (g) If medications are delivered to inmates by staff within the facility, staff must be trained in and currently certified in accordance with N.D.C.C. § 12-44.1-29. RCLEC has received required training as specified in standard 52. Facility procedures and staff knowledge did not reflect training. RCLEC staff were not able to identify Lacey was having a medical emergency or respond to the medical emergency with an AED, Narcan, or immediate CPR. RCLEC is not in compliance with Standard 52 of the North Dakota Correctional Facility Standards.

XI.

Standard 59 of the North Dakota Correctional Facility Standards requires every facility "have a written policy and procedure for intoxication management that includes a definition of intoxication if the facility holds persons who appear intoxicated or under the influence of alcohol or controlled substances..." Policy 3.02 in RCLEC's policy and procedure manual meets these requirements. However, Standard 4 of the North Dakota Correctional Facility Standards provides, in relevant part, "[e]ach requirement for a policy or procedure in the North Dakota Correctional Facility Standards includes the requirement to demonstrate the facility's compliance with its policy." RCLEC did not follow its policy requiring staff to place an intoxicated person experiencing hallucinations on observation with 15 minute-checks on an irregular basis. RCLEC violated Standard 59 of the North Dakota Correctional Facility Standards.

ORDER OF NON-COMPLIANCE AND RECLASSIFICATION

Based on the above Findings of Fact and Conclusions of Law, the DOCR issues this Order of Non-compliance and Reclassification.

IT IS ORDERED THAT, in accordance with N.D.C.C § 12-44.1-25(4), the prior temporary order for RCLEC's closure is vacated and

- a) RCLEC is reclassified, effective immediately, to a grade three correctional facility, which may not detain or confine inmates for more than ninety-six (96) hours, for a probationary period of a minimum of two (2) months from the time of re-opening; and
- b) After RCLEC operates as a grade three facility for a minimum of two months, RCLEC may request transition to operate as a grade two correctional facility, and upon approval of DOCR facility inspectors, RCLEC may operate as a grade two correctional facility until the DOCR vacates this order.

IT IS FURTHER ORDERED THAT RCLEC shall be subject to regular inspections and monitoring by DOCR correctional facility inspectors. The RCLEC shall pay to the DOCR the reasonable and actual costs incurred by the DOCR for inspections and monitoring.

IT IS FURTHER ORDERED THAT RCLEC shall send the following to the DOCR Facility Inspector:

- a) Daily rosters of inmates, including the inmate's name, identification number, and admission date;
- b) Reports at least weekly, including corrective actions and training completed for facility staff; a list of inmates who were on observation; any medical services provided outside routine medical care, including medical clearance prior to intake and emergency medical care; and
- c) Any policy changes, immediately upon implementation.

IT IS FURTHER ORDERED THAT RCLEC shall remain subject to this Order of Non-compliance and Reclassification until DOCR vacates this order.

IT IS FURTHER ORDERED THAT upon determination by the DOCR that the RCLEC has fully complied with all requirements of the DOCR, the DOCR shall vacate this order, subject to its continuing jurisdiction and authority under N.D.C.C. Ch. 12-44.1 to continue to inspect the RCLEC and establish conditions and requirements it determines are necessary for the safety of the inmates, staff, visitors, and the public based upon its inspections.

Dated this 2nd day of September, 2020



David L. Krabbenhoft
Interim Director

North Dakota Department of Corrections and Rehabilitation